State of New Hampshire

OFFICE OF ATTORNEY-GENERAL

COPY

September 17, 1954

Richard C. Duncan, Esq.,
Assistant Attorney General

Attorney General

OASI Status of Civilian
Employees of National Guard

James J. Barry, Commissioner,
Department of Public Welfare

Dear Mr. Barry:

In reply to your letter of September 14, 1954 respecting the above entitled subject matter, I will attempt to answer your questions in the order in which they appear.

It appears that you have received an inquiry from the Adjutant General asking what are the necessary steps to cover under OASI the civilian employees of the National Guard in view of the recent amendment to the Federal Social Security Act which now provides that civilian employees employed pursuant to section 90 of the National Defense Act of June 3, 1916 shall for OASI purposes be deemed state employees of a separate coverage group. It further appears that these civilian employees are not covered by an existing retirement system and are paid wholly from Department of Defense funds.

You first inquire whether the Department of Defense would also pay the employer's contribution and share of administrative cost. It would seem that this would be necessary as no part of the wages are paid from State funds. Of course, I cannot answer whether the Department of Defense will pay this cost, but it is clear that State funds could not be used without legislative appropriation and authorization which would necessarily have to be carefully drawn as it has been consistently held by this office that these employees are not in any manner employees of the State. I would suggest that it might be appropriate for Colonel Jacobson to inquire from the proper Defense Department official whether such contributions would be made.

You next ask as to the type of agreement necessary to provide coverage. The usual type of modification agreement would be incongruous in this type of plan. Usually the employer, a political subdivision, enters into an agreement with the State of New Hampshire, through its authorized agent, the Department of Public Welfare, whereby the master agreement between the State and the Federal Government is modified. In the present case, where the individuals are deemed State employees, it must follow that the State is the employer and the proper party to the plan whereby the employees obtain coverage. If the usual

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methods were followed we would have the State entering into an agreement with itself (through your Department) so as to modify another agreement to which the State is a party. It would seem that the proper method would be for some type of agreement between the State and Federal Government so that the original agreement is modified so as to include employees of the State itself. As any agreement must meet the approval of the Federal Agency, I would suggest that inquiry be made whether any rules of procedure have been promulgated by it governing this type of situation.

Here again caution must be used so as not to bind the State to more than authorized by the Legislature, such as not to guarantee contributions beyond an appropriation period in the event State funds are appropriated and used in any way in providing coverage for these employees.

In answer to your third question, the signature of the Governor would be necessary if I am correct in believing that the State would be a party to the agreement.

Lastly, I concur with your interpretation that chapter 89, Laws of 1953 would restrict coverage to the first day of the calendar year in which any modification is approved.

Very truly yours,

Richard C. Duncan
Assistant Attorney General

RCD:HP